

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

SILVESTRE B. CUEVAS,

Petitioner,

v.

**Civil Action No. 1:07cv164
(Judge Keeley)**

JOE DRIVER, Warden,

Respondent.

**ORDER DIRECTING THE RESPONDENT TO FILE A
LIMITED RESPONSE TO THE PETITION**

On November 27, 2007, the *pro se* petitioner initiated this case by filing a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. In the petition, the petitioner asserts that the respondent has been deliberately indifferent to his protection. The petitioner asserts that although he is currently in protective custody, because of his continued cooperation with the government, he needs to have a “blanket separation” from all inmates housed in his current place of incarceration and any institution to which he may be transferred. The petitioner paid the \$5.00 filing fee on December 5, 2007.

Having made a preliminary review of the petition, the undersigned is unable to determine whether summary dismissal is warranted based on the current record. It appears that this case should have been filed as a civil rights action, rather than a habeas corpus action under § 2241. The substance of the petitioner’s claim is that the Bureau of Prisons refuses to take the necessary measures to ensure the petitioner’s safety. Thus, it appears that the petitioner’s claim involves claims of constitutional violations related to the conditions of his confinement, rather than habeas claims related to the execution of his sentence.

Accordingly, because it is not clear whether the petitioner's claims have been properly filed, within **thirty (30) days** from the date of this Order, the respondent shall file a response to the petition limited to this issue. Petitioner has **thirty (30) days** from the date a response is filed to file any reply he may have. Pursuant to Rule 7 of the Federal Rules of Civil Procedure, no other pleadings will be accepted without the express order of the court upon a timely motion duly made.¹ If the court subsequently determines that the petitioner's claims have been properly raised under § 2241, the respondent shall be given additional time to file a response on the merits.

IT IS SO ORDERED.

The Clerk is directed to add Assistant United States Attorney Daniel W. Dickinson, Jr., P.O. Box 591, Wheeling, WV 26003, as counsel for the respondent, and send him both hard and electronic copies of this Order. The Clerk shall also mail a copy of this Order to the *pro se* petitioner.

DATED: December 7, 2007.

/s *John S. Kaull*
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE

¹ "There shall be a complaint and an answer . . . [n]o other pleading shall be allowed, except that the court may order a reply to an answer . . ." Fed.R.Civ.P. 7(a).